

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

CIVIL WRIT PETITION NO.2825 OF 2017

Dr.Ashok Rajmal Mehta	}	
Aged 78 years, Occupation: Doctor		
Heir and legal representative of Smt.		
Tarabai Rajmal Mehta, deceased	}	
presently residing at 5 th Floor,		
Poonil Apartments, 1 th Road, JVPD		
Scheme, 9, Ashok Nagar Society	}	
Vile Parle (W) Mumbai-400 049. ..		Petitioner
		(Orig.Defendant)

versus

M/s Shree Tirthankar Co	}	
a firm having their office at		
Gogteewadi, Aarey Road,	}	
Goregaon (East) Mumbai-400 063. ..		.. Respondent
	}	(Orig.Plaintiff)

Ms.Shivani Shah with Ms.Ekta Pandav
I/b M/s Jhangiani Narula & Associates for Petitioner
Mr.Sameer Bhalekar for Respondent

CORAM : M.S.SONAK, J

DATE: 5th OCTOBER 2017

ORAL JUDGMENT

1. Heard Ms.Shivani Shah for the Petitioner and
Mr.Sameer Bhalekar for Respondent.

2. Rule.

3. With consent and at the request of learned counsel for the parties, Rule is made returnable forthwith.

4. The challenge in this Petition is to the impugned order dated 1.12.2016 by which the Appellate Bench of the Small Causes Court has refused to condone the delay in institution of a Revision against the Judgment and decree dated 4.1.2016 which directed eviction of the Petitioner. In this case, the delay in institution of the Revision was of 54 days. However, the Appeal Bench has come to the conclusion that no sufficient cause was shown and further cause which was shown was false and reason stated was also false.

5. The Petitioner in the Application seeking condonation of delay had stated that the matter was entrusted to one Advocate Mr.Mukesh Sangani for the purpose of institution of a Revision. However, there was delay on the part of Advocate Mr.Mukesh Sangani and therefore, the Revision could not be instituted within the prescribed period of limitation.

6. The Appeal Court has held that the material on record indicates that Advocate Mr.Mukesh Sangani had nothing to do with the matter and who was entrusted the matter, was Mr.Thakkar. The Appeal Court has held that since a false case was set out, there was no reason to condone the delay.

7. Ms.Shivani Shah learned counsel for the Petitioner points out that Mr.Mukesh Sangani was engaged to instruct Mr.Thakkar and it is in this context that reference was made to Mr.Mukesh Sangani. She points out that there was no intention to make any false statement or to suppress the facts. She points out that the Petitioner has really gained nothing by mis-stating or attempting to mis-state any fact. She submits that this is a fit case for condonation of delay and at the highest, by imposition of some reasonable costs.

8. Mr.Sameer Bhalekar learned counsel for the Respondent submits that in such matters the quantum of delay is not relevant but, the cause shown is relevant. Since a false ground was raised, the Appeal Court was justified in declining

the condonation. He submits that decree in the present case was made on 4.1.2016 and till date the decree has not been executed for reasons attributable to the Petitioner. Valuable time has been spent and severe prejudice will result to the Respondent if delay is condoned and Appeal is restored for hearing on merits.

9. In N.BALAKRISHNAN VS M.KRISHNAMURTHY reported in (1998) 7 Supreme Court Cases 123 the Supreme Court has held that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding,

much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. *But, it is a different matter when the first court refuses to condone the delay, In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.*

10. The Supreme Court proceeds to observe that the reason for such a different stance is that the primary function of the court is to adjudicate the dispute between the parties and to advance substantial justice.

The rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

11. A court knows that refusal to condone delay would result in foreclosing a suitor from putting his cause. There is no

presumption that delay in approaching the court is always deliberate. The expression “sufficient cause” should receive a liberal construction so as to advance substantial justice. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not sufficient to turn down his plea and to shut the door against him. *While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.*

12. Having considered the rival contentions and perusing the material on record, delay can be condoned subject to payment of exemplary costs. An Applicant seeking condonation of delay has to state the true and factual particulars. The fact that the delay was only of 54 days, does not dispense with the requirement stating the true and correct

facts. If indeed Advocate Mr.Mukesh Sangani was engaged to only instruct Mr.Thakkar who was actually entrusted with the matter, this fact should have been reflected in the Application seeking condonation of delay. Nevertheless, this is a fit case where the explanation now submitted by Ms.Shivani Shah can be accepted. This is because, the explanation is a plausible explanation. Besides, it cannot be said that the Applicant has gained substantially by omitting reference to Mr.Thakkar.

13. Upon taking into consideration all these circumstances, delay can be condoned. However, the Respondent will have to be suitably compensated because for no fault of the Respondent it is the Respondent who shall suffer real prejudice. The Respondent has not only been deprived of possession of the suit premises but, further there is bound to be delay if the Appeal is to be heard on merits. Almost two years have passed since the Respondent has obtained the eviction decree. The prejudice is therefore required to be compensated by costs. For all this, the Petitioner, as condition precedent for condonation of delay, is liable to pay costs quantified at

Rs.1,00,000/-.

14. This Petition is therefore, disposed of with the following order :

ORDER

(a) The impugned order dated 1.12.2016 made by the Appellate Bench of the Small Causes Court declining to condone the delay is set aside. The delay in institution of the Revision is hereby condoned ;

(b) The aforesaid shall be subject to the Petitioner depositing before the Appeal Bench costs of Rs.1,00,000/- within a period of two weeks from today ;

(c) In case the amount of costs are not deposited within a period of two weeks from today, this Petition shall be deemed to have been dismissed without any reference to this Court ;

(d) Upon deposit of costs, the Respondent shall be entitled to withdraw the same unconditionally ;

(e) For a period of six weeks from today, execution of the impugned decree is stayed ;

(f) The Petitioner after deposit of amount of costs, may apply to the Appeal Court for interim reliefs in the meanwhile ;

(g) The Appeal Court to consider the application for interim relief on its own merits without being influenced by the interim order granted by this Court. If the Appeal Bench comes to the conclusion that any case is made out for grant of interim relief, there is no doubt that the Appeal Bench will impose suitable condition upon the Petitioner in the light of the ruling of the Hon'ble Supreme Court in the case of ATMA RAM PROPERTIES VS FEDERAL MOTORS PVT.LTD reported in (2005) 1 SCC page 705 and STATE OF MAHARASHTRA & anr VS SUPER MAX INTERNATIONAL PVT.LTD reported in 2009 (5) ALL MR page 1001.

(h) Further, it is made clear that in case the amount of costs are not deposited within a period of two weeks, this interim protection now granted will stand vacated without further reference to this Court.

15. Rule is made absolute to the aforesaid extent.

All concerned to act on the basis of an
authenticated copy of this order.

(M.S.SONAK, J)